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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.

Case No. 4:20-cv-05640-YGR-TSH

Plaintiff, Counter-defendant

**DECLARATION OF MARK A. PERRY IN  
SUPPORT OF APPLE INC.'S STATEMENT  
IN SUPPORT OF ADMINISTRATIVE  
MOTION TO SEAL**

v.

APPLE INC.,

The Honorable Yvonne Gonzalez Rogers

Defendant, Counterclaimant

1 I, Mark A. Perry, hereby declare as follows:

2       1. I am an attorney licensed to practice in the State of California, and a member of the Bar  
 3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Apple  
 4 Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential  
 5 information based on my personal experience representing Apple. I have personal knowledge of the  
 6 facts stated below and, if called as a witness, would testify competently thereto. I submit this declaration  
 7 in support of Apple’s Statement in Support of Administrative Motion to Seal.<sup>1</sup>

8       2. I am aware that the law of this Circuit allows information to be filed under seal for good  
 9 cause or in certain compelling circumstances. I also understand that courts routinely seal filings where  
 10 documents include a company’s trade secrets, internal codenames, confidential research and  
 11 development, personally identifiable information, or other commercially sensitive information. I  
 12 understand that this Court has broad latitude to prevent the public disclosure of these categories of  
 13 commercially sensitive information.

14       3. Apple operates in an intensely competitive environment. Apple has serious and  
 15 legitimate concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive  
 16 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect  
 17 the confidentiality of its information.

18       4. Apple has carefully reviewed Epic Games, Inc.’s Administrative Motion to Consider  
 19 Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (“Epic’s  
 20 Motion”) (Dkt. 1325), and now proposes to partially seal information therein that, if disclosed, could  
 21 harm Apple and/or a third-party developer’s competitive business interests and violate Apple’s privilege  
 22 claims.

23       5. Apple seeks to partially seal Epic Games, Inc.’s Post-Hearing Findings of Fact (Dkt.

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 25       <sup>1</sup> Courts in the Ninth Circuit routinely grant motions to seal based on declarations of counsel. See,  
 26 e.g., *In re Apple Securities Litigation*, 19-cv-02033-YGR, Dkt. 223 (N.D. Cal.); *In re Qualcomm Litig.*,  
 27 No. 17-cv-00108-GPC, Dkt. 398-1 (S.D. Cal. Mar. 26, 2018); *Avago Techs. U.S. Inc. v. Iptronics Inc.*,  
 28 No. 10-cv-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-cv-  
 00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2013). If the Court deems this declaration insufficient, Apple  
 respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1 1326) (“Epic’s Post-Hearing Findings”). Epic’s Post-Hearing Findings contain competitively sensitive,  
 2 non-public information regarding Apple’s financial information and internal project codenames, which  
 3 Apple intends to keep confidential. The financial information consists of actual Apple revenue figures,  
 4 revenue projections and estimated losses, and developer cost estimates based on proprietary information.  
 5 Public disclosure would reveal Apple’s internal business decision-making and sensitive financial data,  
 6 which could be used by competitors to gain an unfair competitive advantage over Apple and/or affect  
 7 Apple’s market position. Epic’s Post-Hearing Findings also contain the sensitive business information  
 8 of a third-party developer which, if revealed, could impact its competitive standing. The business  
 9 information consists of third-party developer user data. Epic’s Post-Hearing Findings also contain  
 10 statements that reflect testimony Apple has moved to strike on the basis of attorney-client privilege  
 11 which, if revealed, would invade Apple’s privilege (Dkt. 1328). Apple has narrowly-tailored its sealing  
 12 request as to maximize the public’s access to court documents without jeopardizing Apple or the third-  
 13 party developer’s business interests, or Apple’s privilege claims. The remainder of Epic’s Post-Hearing  
 14 Findings remains unredacted.

15 6. Below is a chart detailing the portions of the document sealable for the reasons explained  
 16 herein, as well as in Apple’s statement.

17 <b>Portion of Document</b> 18 <b>Sought to be Sealed</b>	19 <b>Document Title</b>	20 <b>Reason to Seal</b>
21 Page 3, lines 1-3	22 Epic’s Post-Hearing Findings	23 Apple previously moved to strike as privileged. <i>See</i> Dkt. 1328.
24 Page 3, line 7	25 Epic’s Post-Hearing Findings	26 Reflects non-public Apple financial information
27 Page 5, lines 7-9	28 Epic’s Post-Hearing Findings	29 Apple previously moved to strike as privileged. <i>See</i> Dkt. 1328.
30 Page 5, lines 24-25	31 Epic’s Post-Hearing Findings	32 Reflects non-public Apple financial information
33 Page 6, lines 5-6	34 Epic’s Post-Hearing Findings	35 Apple previously moved to strike as privileged. <i>See</i> Dkt. 1328.

1 2 <b>Portion of Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
3 4 Page 9, line 8	Epic's Post-Hearing Findings	Reflects non-public Apple project codenames
5 6 Page 11, line 13	Epic's Post-Hearing Findings	Reflects non-public Apple financial information
7 8 Page 11, line 15-16	Epic's Post-Hearing Findings	Reflects non-public Apple financial information
9 10 Page 12, line 4	Epic's Post-Hearing Findings	Reflects non-public Apple financial information
11 12 Page 12, line 5	Epic's Post-Hearing Findings	Reflects non-public Apple financial information
13 14 Page 13, lines 27-28	Epic's Post-Hearing Findings	Apple previously moved to strike as privileged. <i>See</i> Dkt. 1328.
15 16 Page 17, line 20	Epic's Post-Hearing Findings	Reflects non-public Apple financial information
17 18 Page 25, line 6	Epic's Post-Hearing Findings	Reflects non-public Apple project codenames
19 20 Page 25, line 9	Epic's Post-Hearing Findings	Reflects non-public Apple project codenames
21 22 Page 28, line 12	Epic's Post-Hearing Findings	Reflects non-public third- party financial information
23 24 Page 29, 13	Epic's Post-Hearing Findings	Reflects non-public Apple financial information

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of March 2025, in Washington, D.C.

1 Dated: March 14, 2025

Respectfully submitted,

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3 By: /s/ Mark A. Perry

4 Mark A. Perry

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